

Federal Trade Commission

court by the Federal Trade Commission or the Department of Justice and that is subject to public comment.

[63 FR 34594, June 25, 1998]

§ 802.71 Acquisitions by gift, intestate succession or devise, or by irrevocable trust.

Acquisitions resulting from a gift, intestate succession, testamentary disposition or transfer by a settlor to an irrevocable trust shall be exempt from the requirements of the act.

§ 802.80 Transitional rule for transactions investigated by the agencies.

§§ 801.2 and 801.50 shall not apply to any transaction that has been the subject of investigation by either the Federal Trade Commission or the Antitrust Division of the Department of Justice in which, prior to the effective date of that section, the reviewing agency obtained documentary material and information under compulsory process from all parties that would be required to submit a Notification and Report Form for Certain Mergers and Acquisitions under Section 801.50 but for this transitional rule.

[70 FR 11514, Mar. 8, 2005]

PART 803—TRANSMITTAL RULES

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APPENDIX TO PART 803—ANTITRUST IMPROVEMENTS ACT NOTIFICATION AND REPORT

§ 803.2

FORM FOR CERTAIN MERGERS AND ACQUISITIONS

AUTHORITY: 15 U.S.C. 18a(d).

SOURCE: 43 FR 33548, July 31, 1978, unless otherwise noted.

§ 803.1 Notification and Report Form.

(a) The notification required by the act shall be the Notification and Report Form set forth in the appendix to this part (803), as amended from time to time. All acquiring and acquired persons required to file notification by the act and these rules shall do so by completing and filing the Notification and Report Form, in accordance with the instructions thereon and these rules. The current version of the Form can be obtained at <http://www.ftc.gov> or <https://www.hsr.gov>.

(b) Any person filing notification may, in addition to the submissions required by this section, submit any other information or documentary material which such person believes will be helpful to the Federal Trade Commission and Assistant Attorney General in assessing the impact of the acquisition upon competition.

[43 FR 33548, July 31, 1978, as amended at 66 FR 8695, Feb. 1, 2001; 71 FR 35998, June 23, 2006]

§ 803.2 Instructions applicable to Notification and Report Form.

(a) The notification required by the act shall be filed by the preacquisition ultimate parent entity, or by any entity included within the person authorized by such preacquisition ultimate parent entity to file notification on its behalf. In the case of a natural person required by the act to file notification, such notification may be filed by his or her legal representative: *Provided however*, That notwithstanding §§ 801.1(c)(2) and 801.2, only one notification shall be filed by or on behalf of a natural person, spouse and minor children with respect to an acquisition as a result of which more than one such natural person will hold voting securities of the same issuer.

Example: Jane Doe, her husband and minor child collectively hold more than 50 percent of the shares of family corporation F. Therefore, Jane Doe (or her husband or minor child) is the "ultimate parent entity" of a "person" composed to herself (or her husband

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or minor child) and F; see paragraphs (a)(3), (b) and (c)(2) of § 801.1. If corporation F is to acquire corporation X, under this paragraph only one notification is to be filed by Jane Doe, her husband and minor child collectively.

(b) Except as provided in paragraph (b)(2) of this section and paragraph (c) of this section:

(1) Items 5–8 of the Notification and Report Form must be completed—

(i) By acquiring persons, with respect to all entities included within the acquiring person;

(ii) By acquired persons, in the case of an acquisition of assets, only with respect to the assets to be acquired;

(iii) By acquired persons, in the case of an acquisition of voting securities, with respect to only the issuer whose voting securities are being acquired, and all entities controlled by such issuer; and

(iv) By acquired persons, in the case of an acquisition of non-corporate interests, with respect to the unincorporated entity whose non-corporate interests are being acquired, and all entities controlled by such unincorporated entity; and

(v) By persons which are both acquiring and acquired persons, separately in the manner that would be required of acquiring and acquired persons under this paragraph, if different.

(2) For purposes of items 7 and 8 of the Notification and Report Form, the acquiring person shall regard the acquired person in the manner described in paragraphs (b)(1) (ii) and (iii) of this section.

Example: Person “A” is comprised of entities separately engaged in grocery retailing, auto rental, and coal mining. Person “B” is comprised of entities separately engaged in wholesale magazine distribution, auto rental and book publishing. “A” proposes to purchase 100 percent of the voting securities of “B”’s book publishing subsidiary. For purposes of item 5, under clause (b)(1)(i), “A” reports the activities of all its entities; under clause (b)(1)(iii), “B” reports only the operations of its book publishing subsidiary. For purposes of items 7 and 8, under paragraph (b)(2) of this section, “A” must regard “B” as consisting only of its book publishing subsidiary and must disregard the fact that “A” and “B” are both engaged in the auto rental business.

(c) In response to items 5, 7, and 8 of the Notification and Report Form—

(1) Information shall be supplied only with respect to operations conducted within the United States; and

(2) Information need not be supplied with respect to assets or voting securities to be acquired, the acquisition of which is exempt from the requirements of the act.

(d) The term *dollar revenues*, as used in the Notification and Report Form, means value of shipments for manufacturing operations, and sales, receipts, revenues, or other appropriate dollar value measure for operations other than manufacturing, f.o.b. the plant or establishment less returns, after discounts and allowances and excluding freight charges and excise taxes. Dollar revenues including delivery may be supplied if delivery is an integral part of the sales price. Dollar revenues include interplant transfers.

(e) A person filing notification may incorporate by reference:

(1) To a previous filing, only documentary materials required to be filed in response to items 4(a) and 4(b) of the Notification and Report Form, which were previously filed by the same person and which are the most recent versions available; except that when the same parties file for a higher threshold no more than 90 days after having made filings with respect to a lower threshold, each party may incorporate by reference in the subsequent filing any documents or information in its earlier filing provided that the documents and information are the most recent available;

(2) To an Internet address directly linking to the document, only documents required to be filed in response to item 4(a) and in response to item 4(b) of the Notification and Report Form. If an Internet address is inoperative or becomes inoperative during the waiting period, or the document that is linked to it is incomplete, or the link requires payment to access the document, upon notification by the Commission or Assistant Attorney General, the parties must make these documents available to the agencies by either referencing an operative Internet address or by providing paper copies to the agencies as provided in § 803.10(c)(1) by 5 p.m. on the next regular business day. Failure to make the

documents available, by the Internet or by providing paper copies, by 5 p.m. on the next regular business day, will result in notice of a deficient filing pursuant to § 803.10(c)(2).

(f) Filings made electronically, including documents or other attachments submitted as part of such filings, must comply with all format and size requirements set forth at <https://www.hsr.gov>. The use of any format or size not specified as acceptable, or any other failure to comply with the applicable format requirements, shall render the entire filing deficient within the meaning of § 803.10(c)(2).

[43 FR 33548, July 31, 1978, as amended at 48 FR 34438, July 29, 1983; 66 FR 8695, Feb. 1, 2001; 66 FR 23565, May 9, 2001; 70 FR 11514, Mar. 8, 2005; 70 FR 73372, Dec. 12, 2005; 71 FR 35998, June 23, 2006]

§ 803.3 Statement of reasons for non-compliance.

A complete response shall be supplied to each item on the Notification and Report Form and to any request for additional information pursuant to section 7A(e) and § 803.20. Whenever the person filing notification is unable to supply a complete response, that person shall provide, for each item for which less than a complete response has been supplied, a statement of reasons for noncompliance. The statement of reasons for noncompliance shall contain all information upon which a person relies in explanation of its noncompliance and shall include at least the following:

(a) Why the person is unable to supply a complete response;

(b) What information, and what specific documents or categories of documents, would have been required for a complete response;

(c) Who, if anyone, has the required information, and specific documents or categories of documents; and a description of all efforts made to obtain such information and documents, including the names of persons who searched for required information and documents, and where the search was conducted. If no such efforts were made, provide an explanation of the reasons why, and a description of all efforts necessary to obtain required information and documents;

(d) Where noncompliance is based on a claim of privilege, a statement of the claim of privilege and all facts relied on in support thereof, including the identity of each document, its author, addressee, date, subject matter, all recipients of the original and of any copies, its present location, and who has control of it.

[48 FR 34439, July 29, 1983]

§ 803.4 Foreign persons refusing to file notification.

(a) In an acquisition to which § 801.30 does not apply, and in which no assets (other than investment assets) located in the United States and no voting securities of a United States issuer will be acquired directly or indirectly, if a foreign acquired person refuses to file notification, then any other person which is a party to the acquisition may file notification on behalf of the foreign person. Such notification shall constitute the notification required of the foreign person by the act and these rules.

(b) Any person filing on behalf of the foreign person pursuant to this section must state in the affidavit required by § 803.5(b) that such foreign person has refused to file notification and must explain all efforts made by the person filing on behalf of the foreign person to obtain compliance with the act and these rules by such foreign person.

(c) Any notification filed on behalf of a foreign person pursuant to this section must contain all information and documentary material reasonably available to the person filing on behalf of the foreign person which such foreign person would be required to provide. Whenever information or documentary material is not reasonably available, the person filing on behalf of the foreign person shall so indicate on the Notification and Report Form, and need not supply the statement of reasons for noncompliance required by § 803.3.

(d) Any foreign person on whose behalf notification has been filed by another person pursuant to this section shall be a "person filing notification" for purposes of the act and these rules. Nothing in this section shall exempt a foreign person from the requirements of the act or these rules with respect to